APPENDIX

Letter from Hunter Jones to W. M. Nicholson and J. B. Ledford dated January 26, 1965

(Appendix No. 44 to Plaintiff-Appellant's Memorandum Re Equitable Relief in District Court)

(Letterhead of Jones, Hewson & Woolard, Charlotte, N. C. 28202)

January 26, 1965

Mr. W. M. Nicholson
Mr. James B. Ledford
Attorneys at Law
Charlotte, N. C.

Re: Interstate Investors, Inc. vs. L. A. Love, et al
Interstate Investors, Inc. vs. Queen City Coach Company, et al

Dear Sirs:

The five individual defendants in the case of Interstate Investors, Inc. vs. L. A. Love, et al have agreed that they will participate in a settlement of these two cases to the extent of $12,500.00 on the basis of a total payment of $25,000.00, provided the proposed participation by Queen City Coach Company and General Realty and Insurance Corporation to the extent of the other $12,500.00 involved in such a settlement is approved by the directors of said companies. A regular directors' meeting is scheduled to be held on January 28th and the matter could be submitted to them at that time provided we have the plaintiff's agreement to accept $25,000.00. In view of the interest of the individual defendants in making the settlement, we have advised that this vote would have to be by a majority of the directors who are not defendants, but the settlement,

if agreed to by you, will be recommended and we believe it would be approved. We would need your agreement to it before we could have it submitted to the directors.

The settlement, if made, would be based upon the following further considerations:

1. Each party would bear its own court costs.

2. All the defendants in both cases would be released from all claims of every nature of the plaintiff Interstate Investors, Inc. and of William R. Burt individually.

3. Interstate Investors, Inc. and William R. Burt would withdraw all opposition to approval of the exchange of stock for stock of Transcontinental Bus System, Inc. pending before the ICC.

4. The plaintiff Interstate Investors, Inc. and William R. Burt would execute a general release in favor of Transcontinental Bus System, Inc., if requested, covering all claims.

Mr. Hewson, Mr. Smith and I will be out of town for the balance of this week after Wednesday, but if you can give us assurance that this proposal will be accepted by the plaintiff before we leave, or can give it to John Ray before the meeting of the directors on Thursday, it can be submitted to the directors and if they approve it we can prepare the settlement papers on our return next week.

Yours very truly,

HUNTER M. JONES

HMJ:H

cc: Mr. Smith
Mr. Ray
Mr. Love

Letter from W. M. Nicholson to Plaintiff-Appellant dated January 28, 1965

(Correspondence, Docket MC-F-8744)

(Letterhead of Wm. M. Nicholson,
Charlotte, N. C. 28204)

January 28, 1965

Mr. William R. Burt, President
Interstate Investors, Inc.
733 Third Avenue
New York 17, New York

Dear Bill:

As per your request during our telephone conversation on yesterday, I am forwarding you the various depositions, letters and other documents that you requested. As a matter of necessity, I had to break these down into five separate packages.

Package No. 1, which is marked in the left hand corner on the face of the package, contains the deposition of Mr. Egan. Package No. 2 contains Hunter Jones' letter of January 26, which is the offer of settlement. Also, a letter from Mr. Jones under date of January 27, 1965, which confirms the settlement plus $425 which is estimated as our cost and which we will have to pay out for depositions and copies. There is also enclosed the affidavit of Addison H. Reese, corrections to deposition of William R. Burt, deposition of Joel W. Wright and deposition of Leslie A. Heath.

Package No. 3 contains the deposition of L. A. Love, Sr. Package No. 4 contains part of the deposition of William R. Burt from Page 1 to Page 165 and in the second volume from Page 166 to Page 290. Package No. 5 contains a continuation of the deposition of William R. Burt from

Page 291 to Page 520. I trust these papers will reach you in good shape. As you know, the offer of settlement was contingent upon a resolution of the Board of Directors of Queen City Coach Company approving aand ordering a payment of its pro rata part.

Hunter Jones left town yesterday afternoon and requested that I call John Ray at 3:00 p.m. today and ascertain if the Board of Directors had acted favorably upon this proposition; I called John Ray a few minutes ago and he was out of the office, and I left word for him to call me. While dictating this letter, the call came in and John Ray advised me that the Board of Directors had acted favorably upon the resolution and now it is a deal and no backing out.

Unless you hear further from me, I strongly suggest that you make your arrangements to be in Charlotte Thursday morning, February 4 in order for us to sign papers, receive the draft and close this matter out.

With kind personal regards,

Sincerely,

W. M. NICHOLSON

WMN:sn
cc: Mr. James B. Ledford

P. S. When you come down next Thursday, be sure and bring a certified copy of a resolution from your Board of Directors authorizing the acceptance of this offer and further authorizing you to act for and on behalf of the corporation in signing such necessary papers in closing this deal. I also suggest that you bring along your corporate seal. With this authority from the corporation and acceptance on its behalf, I see no hitch in closing this matter out Thursday.

W. M. N.

January 29, 1965 Resolution of Board of Directors of Plaintiff-Appellant

(Ex. 3 to Affidavit of W. R. Burt of March 14, 1967 Upon Standing Motion)

CERTIFICATE OF RESOLUTION

The undersigned duly certifies that at a properly held meeting of the board of directors of Interstate Investors, Inc., 733 Third Avenue, New York, New York on January 29, 1965 at which a quorum was present the following resolutions were properly and formally adopted:

RESOLVED, that the President be and hereby is authorized to settle Civil Action #1914 USDC, Western District of North Carolina versus L. A. Love, Sr. et al, and Civil Action #1935 USDC, Western District of North Carolina versus Queen City Coach Co. and General Realty & Insurance Corp. by accepting payment on behalf of the defendants of $25,000 plus $425 for expenses, and it was further

RESOLVED, that William R. Burt, President of the corporation, be and hereby is authorized to execute on behalf of the corporation all documents necessary to consummate the settlement.

/s/ MIRIAM A. CAHNERS
Miriam A. Cahners, Secretary

Corporate Seal

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

On this 2nd day of February 1965, before me personally came Miriam A. Cahners to me known, who, being by me duly sworn, did depose and say that she resides at 200 East 57th Street, New York, New York that she is Secretary of Interstate Investors, Inc., the corporation described in and which executed the foregoing instrument; that she knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that she signed her name thereto by like order.

ARNOLD C. STREAM.
Notary Public, State of New York
No. 31-3874125
Certified in New York County
Commission Expires March 30, 1965

Letter from Hunter Jones to Nicholson and Ledford dated February 1, 1965

(Correspondence, Ex Parte MC-65 (Sub. No. 3))

(Letterhead of Jones, Hewson & Woolard,
Charlotte, N. C. 28202)

February 1, 1965

Mr. W. M. Nicholson and
Mr. James B. Ledford
Attorneys at Law
Charlotte, N. C.

RE: Interstate Investors, Inc. vs. Love, et al
Interstate Investors, Inc. vs. Queen City
Coach Company, et al

Dear Sirs:

I am delivering to Mr. Ledford's office a release to be executed by Interstate Investors, Inc. and William R. Burt and approved by the directors of Interstate Investors, Inc. so that you can forward this to Mr. Burt and have the execution completed before he leaves for Charlotte. We want eight of the releases executed so that each defendant can have an executed copy and Transcontinental Bus System, Inc. can have the eighth one. Please be sure to have the corporate seal of Interstate Investors, Inc. attached to each executed copy of the release.

I hope to receive from Mr. Goff today the papers which he will want signed in connection with the proceedings before the Interstate Commerce Commission. I will turn them over to you as soon as they are received, and it may

be that these also will have to go to New York for signatures other than that of Mr. Burt.

I enclose original and two copies of judgment in each case which we propose. Inasmuch as the release authorizes you to consent to these judgments as attorneys, we did not deem it necessary to have them signed by an officer of the plaintiff. However, if you prefer that they be signed on behalf of Interstate Investors, Inc. by Mr. Burt as president, I suggest that you provide for the additional signature on the space to the right of your signatures.

Yours very truly,

/s/ HUNTER M. JONES

HMJ:H
Encl.

Letter from J. B. Ledford to Plaintiff-Appellant dated February 2, 1965

(Enclosure #1 to plaintiff's supplemental memorandum in District Court re motion filed November 25, 1966)

(Letterhead of James B. Ledford, Charlotte, N. C. 28202)

February 2, 1965

Mr. William R. Burt, President
Interstate Investors, Inc.
733 Third Avenue
New York 17, New York

Dear Bill:

'Enclosed are copies of release to be executed by you, attested by the secretary of III and with the corporate seal affixed, together with a copy of a judgment that the Defendants want entered upon the conclusion of this matter and a copy of Mr. Jones' letter dated as shown. Since talking with you and Mr. Nicholson by telephone this morning, you will note that the releases have been amended so that the signatures of directors are not required, but Mr. Jones does want a certified copy of the resolution of the directors pertaining to this transaction that you referred to this morning.'

Mr. Jones informed me that the letter from Goff should arrive some time today, and that, inasmuch as an attorney in Washington filed a brief for the ICC on behalf of ICC, that his signature is desired on that instrument. I will forward it to you upon receipt of it.

Mr. Nicholson will be out of town the rest of this day and all day tomorrow, and before he left, suggested that if all documents can be completed that we would hope that you could be in Charlotte on Friday, February 5, for concluding the transaction at hand. Since he is out of town I will undertake to get the documents of Goff in the mail to you either late today or tomorrow. With warm regards, I remain,

Very truly yours,

/s/ JIM
James B. Ledford

JBL:en

Enclosures

cc: Mr. W. M. Nicholson

Letter from Plaintiff-Appellant to I.C.C. (Acting Secretary) dated February 2, 1965

(Ex. CCC to Plaintiff's Reply to Intervenor's Motion to Dismiss in District Court)

February 2, 1965

Mrs. Bertha P. Armes
Acting Secretary
Interstate Commerce Commission
Washington 25, D.C.

Re: *Ex Parte MC-65 (Sub-No. 3)*

Dear Mrs. Armes:

Receipt is acknowledged of Mr. McCoy's letter of December 17, 1964, and petitioner acquiesces in the modification of the original petition as indicated in the letter and the notice published in the Federal Register on December 2, 1964.

In view of such acquiescence, petitioner has not seen fit to disseminate additional copies of the original petition, in the belief that the contents of the notice in the Federal Register have superseded the original text of November 5, 1964 and that interested parties should concentrate their attention on the subject matter as revised and published by the Commission.

The representations on behalf of the Motor Carriers Lawyers Association dated January 29, 1965 seems to confirm the danger that persons insisting on acquiring and reading the original petition can become confused as to what the

proper subject matter now is after the modification of the petition as reflected in the notice published in the Federal Register.

I enclose a copy of a letter from the Chairman of the Senate Subcommittee on Antitrust and Monopoly dated November 25, 1964 which confirms that procedures and problems raised by subject petition (monopoly, duopoly, over-concentration in transportation) are of concern and interest to the legislative branch of the Government.

It is requested that this letter and its enclosure be shown to Chairman Webb for such consideration and further dissemination in the Commission as he may deem appropriate.

It was the accident of being a participant in a bus control hearing that caused the writer of this letter to realize that, if he had not been present, a most unreliable basis for producing the raw evidentiary material upon which to base a finding on the record by the Commission in the public interest in accordance with the legal requirements analyzed and set forth in the "Report of the Attorney Generals' National Committee to Study the Antitrust Laws" dated March 31, 1955, Chapter VI, Regulated Industries at p. 270 re Mergers.

It certainly should not sit well with the Senate Subcommittee on Antitrust and Monopoly to find on investigation that the Attorney General has not lifted a finger to head off duopoly in the intercity, scheduled bus industry and that the Commission has absolutely no procedure set up for developing evidence in the record (other than what the duopolists would choose to introduce) of what action is in the public interest upon which to exercise and to base its expert judgment.

Incredible as it may seem, the applicant and proponent of duopoly in Docket No. MC-F-8744 has even cited in its brief the absence of the Department of Justice from participation in the proceedings as evidence that the Department condones the establishing of duopoly (See brief of Transcontinental Bus System, p. 112).

Queen City's management and Transcontinental (which has under its contract with Queen to approve any disbursements not in the ordinary course of business) are conditioning their willingness to settle the private breach of contract action pending in the Federal Courts on Petitioners withdrawal of its opposition of record to the Transcontinental acquisitions. This is precisely the reason I gave to the Antitrust Division as to why it rather than petitioner should carry the burden of developing the public interest and monopoly aspects of the proposed Transcontinental mergers before the Commission.

The issue of settlement in the Federal Court breach of contract proceedings has been precipitated by defendants motion for summary judgment and the Courts desire to rule thereon promptly. Consequently petitioner is under pressure from Queen City to accept a substantial monetary settlement proposed by defendants or risk the expenses inherent in appeal if the summary judgement opinion is adverse to plaintiff. The problem of pressure for voluntary settlement, let alone the involuntary effect resulting from a motion for summary judgement, was reviewed with Mr. Pearce of the Antitrust Division as a reason for not placing the burden on private parties to carry forward public interest aspects in the ICC hearings and was specifically referred to in the first full paragraph on page 6 of

my letter of September 21, 1964 to then Vice Chairman Webb.

By copy of this letter to the Attorney General, I am suggesting that his Department assume the position of (or replace or substitute for) and responsibility for pursuing to completion the arguments put forward by petitioner in the Docket No. MC-F-8744 proceedings and in support of subject petition. The Department could be a late intervenor in the merger dockets and rely on the record and material produced by Interstate to support its position.

I am enclosing copies of Interstate's brief in this letter to the Attorney General and to Senator Hart so that they may have full details before them of the public interest aspects developed in the hearings by Interstate which, it is believed, should be preserved for consideration, even though Transcontinental and Queen may maneuver in the private litigation successfully to force Interstate's withdrawal from the ICC proceedings.

Only in this way or by affirmative action of the Commission can the public interest be adequately represented despite the coercive pressure on petitioner and imminence of court action in the private litigation in North Carolina.

Very truly yours,

WILLIAM R. BURT
President

WRB:l
encl.

ccs: Attorney General Katzenbach
Senator Philip Hart, Chairman
Senate Subcommittee on Antitrust and Monopoly

Letter from William R. Burt to The Hon. J. Braxton Craven, Jr. dated February 4, 1965

(Appendix F to Intervenor's Reply to Plaintiff-Appellant's Petition in Ex Parte MC-65 [Sub. No. 3])

WILLIAM R. BURT
ATTORNEY AT LAW
733 THIRD AVENUE
NEW YORK 17, N. Y.
MURRAY HILL 2-3277

February 4, 1965

The Hon. J. Braxton Craven, Jr.
Chief Judge
Federal Courthouse
Charlotte, North Carolina

Re: Civil Actions No. 1914 and No. 1935
Interstate v. Love et al and Queen City

Dear Judge Craven:

Inasmuch as we appeared as counsel for Interstate at the deposition of International Utilities, Inc. by William F. Egan in New York City on December 3, 1964, certain action was taken by counsel for the defendants and the reporter it selected in Civil Action No. 1914 and No. 1935 in regard to such deposition that we believe seriously prejudiced our client.

Inasmuch as the settlement that has been worked out has been negotiated by local counsel for the parties under your friendly prodding, we are setting forth the facts of what

occurred in New York directly before you so that you can consider their weight and advise whether the matters so raised in your opinion are of sufficient weight to warrant submission by the plaintiff of a motion for a continuance under Rule 56(f) with all that that involves. * * *

* * * You alone can appreciate how much you have done via your control of timing and informally expressed views of the merits of the litigation, based on the record that was before you for evaluation coupled with the court's power to grant or deny motions, to cause settlement within a certain monetary range. If what was before you at the time you expressed your views was the work product of fair opportunity to the plaintiff to develop the record, there is no question but that plaintiff would be chargeable with adherence to any settlement that was worked out under your guidance and power to grant the motion for summary judgement or, alternately, nonsuit.

On the other hand, if you consider the procedure deficiencies in the proceedings outlined above have been of substantial detriment to plaintiff's cause because you were mousetrapped into expressing your views on the merits prior to fair opportunity having been accorded plaintiff to permit it to develop an adequate factual record upon which you could base your evaluation, then we believe plaintiff should be encouraged to submit a motion for a continuance under Rule 56(f) with a corresponding postponement of the trial date.

Counsel for defendants has indicated that you were instrumental in defendants setting the limits of their settlement offer and you, of course, know the pressure that has been exerted on Mr. Nicholson by the possibility that the boom would be lowered within a matter of hours on plaintiff in

the form of entry of the granting of the motions for summary judgement by defendants unless settlement was reached.

So that you may be aware of the massiveness of the effort, which included resolution of many matters in the public interest, that may abort because of the views that you have expressed on the merits of the pending litigation, based on the reasons outlined above on what we believe was deficient record before you, we enclose several documents which outline the scope of the actions hinging for their continuance upon whether plaintiff is granted an adequate day in your court, or what is believed to be an inadequate one resulting from the procedural deficiencies outlined above • • •

• • • This material is submitted informally in the interest of expediting preliminary consideration and deposition of it by the Court.

As matters now stand, the cases are enroute to settlement, and this letter merely raises problem for reconsideration as to whether the plaintiff had a fair day in court on the basis of which the settlement was evolved.

Very truly yours,

William R. Burt

WRB:1
enclosures

Letter from William R. Burt to James Ledford dated February 8, 1965

(Enclosure #2 to Plaintiff's Supplemental Memorandum in District Court re Motion Filed November 25, 1966)

February 8, 1965

James Ledford, Esq.
500 Law Building
Charlotte, North Carolina

Dear Jim:

We have gone over the material forwarded with your letters dated February 2 and February 5 and wish to make the following comments within the framework of the settlement letters from counsel for defendants in Civil Actions 1914 and 1935 dated January 26 and January 27, 1965.

1) Paragraph 2 of Mr. Jones's letter provides for release of defendants in both cases, and it is believed that one document or set of documents should be drawn up to achieve this as stated without extending to include "all of its officers and directors" for Queen and General Realty.

2) Paragraph 3 states "would withdraw all opposition to approval of the exchange of stock."

a) This withdrawal can only, in our opinion, be pursuant to filing the settlement documents and advising the Commission that the withdrawal is based solely on such settlement, and

b) Ex Parte MC-65 (Sub No. 3) is a petition for rule making and as published in the Federal Register at p.

16105 for December 2, 1964, which text as published has been acquiesced in by Interstate and supersedes the original petition, relates to all transportation under jurisdiction of ICC. It is not an opposition proceeding and does not fall within the scope of "withdraw all opposition." In view of the fact that Interstate will have withdrawn from the MC-F-8744 proceedings, Ex Parte MC-65 cannot have any "opposition" status.

3) Paragraph 4 provides for a release for Transcontinental Bus Systems, Inc. and should be covered by a separate general release document apart from the documents covering the defendants and, of course, the Transcontinental document should not encompass "all of its officers and directors" because such a requirement was not included in Mr. Jones's letter of January 26.

4) You have advised me that Mr. Jones has agreed that from each person Interstate and/or Burt are required to issue a general release, Interstate and Burt will receive a general release in exchange.

5) We were somewhat shocked to discover that the draft of "Request of Interstate Investors, Inc." to be dismissed as a protestant in the above captioned dockets (MC-F-8744 and MC-F-8774) as drawn by counsel for Transcontinental and the defendants provided that Interstate "has now reconsidered its position." Interstate has not reconsidered anything and, solely as a condition required by defendants in Civil Actions 1914 and 1935 USDC-W.D. No. Car. in their settlement proposal, has given consideration to any withdrawal. To misstate the facts as proposed by defendants and Transcontinental would, in our opinion, constitute a conscious misstatement to the Commission.

If documents can be drawn up reflecting the above and sent here promptly, we shall process them here immediately upon receipt with our counsel, Paskus, Gordon and Hyman, in advance of my departure for Charlotte.

Sincerely yours,

William R. Burt

WRB/l

ccs: Messrs. Goff
Jones
Nicholson

Request of Plaintiff-Appellant To Be Dismissed as Protestant in Dockets MC-F-8744 and 8774 and Finance Dockets 23123 and 23159 dated February 16, 1965

(Appendix J to Intervenor-Defendant-Appellee's Reply to Plaintiff-Appellant's Petition in Ex Parte MC-65 [Sub No. 3])

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Docket No. MC-F-8744

TRANSCONTINENTAL BUS SYSTEM, INC.

—CONTROL—

VIRGINIA STAGE LINES, INCORPORATED, *et al.*

Finance Docket No. 23123

TRANSCONTINENTAL BUS SYSTEM, INC.

—STOCK—

Docket No. MC-F-8744

TRANSCONTINENTAL BUS SYSTEM, INC.

—CONTROL—

QUEEN CITY COACH COMPANY, *et al.*

Finance Docket No. 23159

TRANSCONTINENTAL BUS SYSTEM, INC.
—STOCK—

REQUEST OF INTERSTATE INVESTORS, INC., TO BE DISMISSED AS A PROTESTANT IN THE ABOVE CAPTIONED DOCKETS

Now comes Interstate Investors, Inc., and for cause would show to the Commission as follows:

I.

On September 9, 1964, Interstate Investors, Inc., by and through its attorneys of record sought leave to intervene in the above captioned matters as a Protestant. Said leave was granted and it participated in the hearings held September 9, 10, 11, 14 and 15 and October 26, 27, 28, and 29, 1964, at the offices of the Interstate Commerce Commission in Washington, D. C. It also filed a Brief in these Dockets dated January 25, 1965.

II.

Interstate Investors, Inc. now desires to withdraw from these matters as an intervenor and to withdraw its protest. Interstate requests that it be allowed to so withdraw and that the Commission issue an Order dismissing it from further participation in these Dockets.

Respectfully submitted,

WILLIAM R. BURT,
733 Third Avenue,
New York 17, New York,
Attorney for Interstate Investors, Inc.

GUY MARTIN,
MARTIN S. THALER,
MARTIN, WHITFIELD AND THALER,
1701 Pennsylvania Avenue,
N.W.,
Washington, D. C. 20006,
Of Counsel.

CERTIFICATE OF SERVICE

I, WILLIAM R. BURT, do hereby certify that on this 16th day of February, 1965, I have caused a copy of the foregoing property addressed with sufficient postage attached to be placed in the United States mail to all parties of record.

William R. Burt

Transcript of Proceedings—February 18, 1965, United States District Court for the Western District of North Carolina

(Appendix G to Intervenor-Defendant-Appellee's Reply to Plaintiff-Appellant's Petition in Ex Parte MC-65 [Sub No. 3])

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Civil #1914

INTERSTATE INVESTORS, INC.,

Plaintiff,

—v.—

L. A. LOVE, SR., JOEL W. WRIGHT, W. E. SMITH, HERMAN H. HARDISON, JR., and JAMES A. HARDISON, JR.,

Defendants.

—and—

Civil #1935

INTERSTATE INVESTORS, INC.,

Plaintiff,

—v.—

QUEEN CITY COACH COMPANY, a corporation, and GENERAL REALTY AND INSURANCE CORPORATION, a corporation,

Defendants.

Transcript of proceedings February 18, 1965

APPEARANCES:

Plaintiff —W. M. NICHOLSON, Esq.
Attorney at Law
Charlottetown Office Bldg.
Charlotte, North Carolina

JAMES B. LEDFORD, Esq.
Attorney at Law
Law Building
Charlotte, North Carolina

Defendants—HUNTER M. JONES, Esq.
Attorney at Law
Law Building
Charlotte, North Carolina

HARRY C. HEWSON, Esq.
Attorney at Law
Law Building
Charlotte, North Carolina

This cause came on for hearing on February 18, 1965, at Charlotte, North Carolina, before the Honorable J. Braxton Craven, Jr., Judge, sitting without a jury, and the following proceedings were had, to wit:

Court: I called this hearing so that I might be released from my obligation to withhold filing the ruling on the motions for summary judgment which I did feel obligated to withhold because I agreed to do so with Mr. Nicholson and Mr. Jones asking me to withhold filing of that ruling. So I now simply inquire of you, do you want me to withhold it further or shall I file it?

Mr. Nicholson: May I make a statement, Your Honor?

Court: Yes, sir.

Mr. Nicholson: Your Honor, I am pleased to state to the Court that a voluntary settlement satisfactory to our client has been entered into and the papers have been signed.

Court: I am pleased, too. In view, however, of Mr. Burt's letter to me I want to inquire of him if this is one that is indeed satisfactory and I don't want him to settle this case if he feels in the slightest coerced by this Court because such a settlement is a terrible thing.

Mr. Nicholson: He has expressed to me his satisfaction of the settlement.

Mr. Burt: Yes, sir, I'm pleased with the settlement that has been worked out.

Court: All right. Well, do we all agree that it has been settled?

Mr. Jones: Yes, sir, with the understanding that Your Honor will now be willing to sign a consent judgment, consented to by the plaintiff and defendant, dismissing the two actions with prejudice because we're going to pay the money on releases which have been executed.

Court: Do you want to know how I ruled on the motions for summary judgment?

Mr. Nicholson: No, sir.

Court: I'll be glad to reveal it.

Mr. Jones: Well, it's all right with us either way.

Court: Would it affect the settlement? Do you agree that it would not affect the settlement?

Mr. Jones: It won't from our standpoint.

Court: I'll instruct the Clerk—she's has it it in her locked box, and she can open it up and put it in the file. Anybody who wants to read it can. Mr. Burt won. Motion for summary judgment was denied.

Whenever you've got the judgment ready, then, I'll be glad to sign it. Do you have it ready now?

Mr. Jones: It's in Mr. Ledford's office.

Mr. Ledford: We have a copy here.

Mr. Jones: He has a copy there but I can bring the original back tomorrow. I'll be over here on another matter, and we are to deliver the checks this afternoon.

Court: All right, fine. Well, I am pleased indeed. I claim to be the greatest compromiser since Henry Clay. Compromise to me is not a dirty word. It's a wonderful thing. If I may say this, when I first started to practice law the first case I ever had was with Mr. Strickland in Lenoir and, bless his heart, he never did try a case in court to win, he always tried it to appeal, always, all the way to the United States Supreme Court. This was my first lawsuit and I said, "Mr. Strickland, I don't know anything about the law, don't know anything about it, but shouldn't we consider compromise?" He said, "Oh, no, we're not going to consider compromise." And we didn't and we got Judge Sink and we lost. Not long after that I ran across Senator Ervin and told him about it and he said that all of life was a compromise, that if you had doughnuts for breakfast you had to leave off pie in the evening. I've adopted that philosophy ever since.

Gentlemen, thank you for coming to this hearing. We'll recess until tomorrow.

• • • • •

Certificate

I, Evelyn S. Berger, Official Court Reporter for the United States District Court for the Western District of North Carolina, do hereby certify the foregoing to be a true, complete and accurate transcript of the trial proceedings in the above entitled case as taken by me in Stenotypy and by recording machine.

This 3rd day of March, 1965.

/s/ Evelyn S. Berger
Official Court Reporter

General Releases to Queen City Coach Corp., et al. and to Transcontinental Bus System, Inc. dated February 18, 1965

(Exs. BB and DD to Complaint)

GENERAL RELEASE

IN CONSIDERATION of the payment of the sum of twenty-five thousand, four hundred and twenty-five dollars ($25,425.00), the receipt of which is hereby acknowledged, the undersigned, Interstate Investors, Inc., a Delaware corporation with its principal office at 733 Third Avenue, New York, N. Y., and William R. Burt, have released, and do hereby forever release and discharge L. A. Love, Sr., Joel W. Wright, W. E. Smith, H. H. Hardison, Jr. and James A. Hardison, Jr.; Queen City Coach Company, a North Carolina corporation, and General Realty and Insurance Corporation, a North Carolina corporation, from all claims and causes of action which they, Interstate Investors, Inc. and William R. Burt, or either of them, now have, or may hereafter have, growing out of all occurrences, conduct, correspondence, documents, contracts and negotiations taking place up to, and including, the date of this instrument, including, but not limited to:

(a) All claims in any way involved in Civil Action No. 1914 instituted in the United States District Court for the Western District of North Carolina entitled "Interstate Investors, Inc., plaintiff, versus L. A. Love, Sr., Joel W. Wright, W. E. Smith, Herman H. Hardison, Jr. and James A. Hardison, Jr., defendants".

(b) All claims in any way involved in Civil Action No. 1935 instituted in the United States District Court for the Western District of North Carolina entitled "Interstate Investors, Inc., plaintiff vs. Queen City Coach Company, a corporation, and General Realty and Insurance Corporation, a corporation, defendants".

(c) All claims and causes of action on contract or for breach of contract.

(d) All claims and causes of action in tort.

(e) All claims and causes of action arising under antitrust laws, and any other Federal or State statute or law, including claims for damages thereunder, and all claims and causes of action at common law relating to monopoly, unfair competition, interference with contract relations or negotiations, or injury to business.

(f) All other claims and causes of action for damages, expenses, injuries, costs and losses.

The undersigned further authorize the attorneys of record for Interstate Investors, Inc. in the two civil actions pending in the United States District Court for the Western District of North Carolina hereinabove recited to consent to judgments in said actions dismissing each of said actions with prejudice and providing that each party in each action shall pay its own costs.

The undersigned Interstate Investors, Inc. is withdrawing its opposition to approval by the Interstate Commerce Commission of the exchange of stock of Queen City Coach Company for stock of Transcontinental Bus System, Inc. by withdrawing as a protestant in Docket No. MC-F-8744 and other proceedings consolidated therewith and by

withdrawing its Ex Parte Petition known as Ex Parte MC-65 (Sub-No. 3). Interstate Investors, Inc. and William R. Burt agree that neither of them will, in the future, directly or indirectly do anything to hinder or delay favorable action by the Interstate Commerce Commission, or any member, agent or agency of said Commission, upon the pending application for approval of said exchange of stock of Queen City Coach Company for stock of Transcontinental Bus System, Inc.; and the undersigned recognize that this agreement precludes them from making any request or suggestion that any other person, corporation, governmental agency or governmental employee do anything to oppose, hinder or delay such approval.

IN TESTIMONY WHEREOF the said Interstate Investors, Inc. has caused this instrument to be signed by its President, and its corporate seal attached, all by corporate authority, and William R. Burt has hereunto set his hand and seal in his individual capacity, this 18 day of February, 1965.

INTERSTATE INVESTORS, INC.

By /s/ WM. R. BURT

President

/s/ WM. R. BURT

William R. Burt

(SEAL)

/s/ WM. MICHELSON

Witness as to all signatures

GENERAL RELEASE

WHEREAS, the undersigned Interstate Investors, Inc., a Delaware corporation, with its principal office at 733 Third Ave., New York, N. Y., and William R. Burt, as part of a settlement agreement between them and L. A. Love, Sr., Joel W. Wright, W. E. Smith, H. H. Hardison, Jr., James A. Hardison, Jr., Queen City Coach Company, a North Carolina corporation, and General Realty and Insurance Corporation, a North Carolina corporation, agreed to execute this release in favor of Transcontinental Bus System, Inc., a Delaware corporation.

NOW, THEREFORE, in consideration of the premises and as part of the consideration for the payment of the sum of twenty-five thousand, four hundred and twenty-five dollars ($25,425.00) to Interstate Investors, Inc., by L. A. Love, Sr., Joel W. Wright, W. E. Smith, H. H. Hardison, Jr., James A. Hardison, Jr., Queen City Coach Company and General Realty and Insurance Corporation, the undersigned Interstate Investors, Inc. and William R. Burt have released, and do hereby forever release and discharge Transcontinental Bus System, Inc., a Delaware corporation, with its principal office in Dallas, Texas, from all claims and causes of action which they, Interstate Investors, Inc. and William R. Burt, or either of them, now have, or may hereafter have, growing out of all occurrences, conduct, correspondence, documents, contracts and negotiations taking place up to, and including, the date of this instrument, including, but not limited to:

(a) All claims referred to in a letter dated June 12, 1964, written by William R. Burt to Mr. Eric Butler of International Utilities Corporation, and all claims growing out of any facts or alleged facts therein related.

(b) All claims and causes of action growing out of negotiations and efforts by Transcontinental Bus System, Inc., to acquire stock in Queen City Coach Company and General Realty and Insurance Corporation; or out of its acquisition of said stock.

(c) All claims and causes of action on contract or for breach of contract.

(d) All claims and causes of action in tort.

(e) All claims and causes of action arising under antitrust laws, and any other Federal or State statute or law, including claims for damages thereunder, and all claims or causes of action at common law relating to monopoly, unfair competition, interference with contract relations or negotiations, or injury to business.

(f) All claims and causes of action for damages, expenses, injuries, costs and losses.

IN TESTIMONY, WHEREOF the said Interstate Investors, Inc. has caused this instrument to be duly executed by its President and its corporate seal attached, all by corporate authority, and William R. Burt has hereunto set his hand and seal in his individual capacity, this 18th day of February, 1965.

INTERSTATE INVESTORS, INC.

By /s/ WM. R. BURT

.....

President

/s/ WM. R. BURT

.....

(CORPORATE SEAL)

(s) WM. NICHOLSON

.....

Witness as to all signatures

Request of Plaintiff-Appellant for Leave to Withdraw in Ex Parte MC-65 [Sub. No. 3] dated February 18, 1965

(Appendix K to Intervenor-Defendant-Appellee's Reply to Plaintiff-Appellant's Petition in Ex Parte MC-65 [Sub No. 3])

BEFORE THE

INTERSTATE COMMERCE COMMISSION

EX PARTE 65 (SUB. NO. 3)

PETITION OF INTERSTATE INVESTORS, INC., FOR INSTITUTION OF A RULEMAKING PROCEEDING

REQUEST OF INTERSTATE INVESTORS, INC. FOR LEAVE TO WITHDRAW PETITION

Now comes Interstate Investors, Inc., and for cause would show to the Commission as follows:

I.

On November 5, 1964, Interstate Investors, Inc., by and through its attorney of record filed a Petition for Institution of a Rulemaking Proceeding, which Petition was numbered Ex Parte 65 (Sub. No. 3). Said Petition was duly noticed in the Federal Register on December 2, 1964, and all interested parties invited to reply thereto within thirty days which time was later extended to February 1 and subsequently to February 11, 1965, by the Commission.

II.

Interstate Investors, Inc., now desires to withdraw said Petition and requests that it be allowed to do so and that the Commission enter an Order dismissing same.

Respectfully submitted,

/s/ WILLIAM R. BURT

William R. Burt
733 Third Avenue,
New York 17, New York,

Attorney for Interstate Investors, Inc.

CERTIFICATE OF SERVICE

I, WILLIAM R. BURT, do hereby certify that on this 18th day of February, 1965, I have caused a copy of the foregoing properly addressed with sufficient postage attached to be placed in the United States mail to all parties of record.

/s/ WILLIAM R. BURT

William R. Burt

Judgment Dismissing Civil Actions Nos. 1914, 1935 U.S.D.C., WD N. Car., dated February 19, 1965

(Exs. D & E to Affidavit of William R. Burt of March 14, 1967 Upon Standing Motion in District Court)

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Civil Action No. 1914

INTERSTATE INVESTORS, INC.,

Plaintiff,

—v.—

L. A. LOVE, SR., JOEL W. WRIGHT, W. E. SMITH, HERMAN H. HARDISON, JR., and JAMES A. HARDISON, JR.,

Defendants.

It appearing to the Court from statement of counsel for both parties and their consent hereto that all matters in controversy have been settled between the parties.

It is thereupon adjudged that this action, be, and it is, dismissed with prejudice, and that each party bear its own costs.

This the 19 day of February, 1965.

J. B. CRAVEN, JR.
United States District Judge

WE CONSENT:

/s/ WILLIAM M. NICHOLSON
William M. Nicholson

/s/ JAMES B. LEDFORD
James B. Ledford
Attorneys for Plaintiff

JONES, HEWSON & WOOLARD
By /s/ HUNTER M. JONES
Hunter M. Jones

/s/ H. C. HEWSON
H. C. Hewson
D. D. SMITH By H. M. JONES
D. D. Smith
Attorneys for Defendants

Judgment

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Civil Action No. 1935

INTERSTATE INVESTORS, INC.,

Plaintiff,

—v.—

QUEEN CITY COACH COMPANY, a corporation, and GENERAL REALTY AND INSURANCE CORPORATION, a corporation,

Defendants.

JUDGMENT

It appearing to the Court from statement of counsel for both parties and their consent hereto that all matters in controversy have been settled between the parties.

It is thereupon adjudged that this action be, and it is, dismissed with prejudice, and that each party bear its own costs.

This the 19 day of February, 1965.

J. B. CRAVEN, JR.
United States District Judge

WE CONSENT:

/s/ WILLIAM M. NICHOLSON
William M. Nicholson

/s/ JAMES B. LEDFORD
James B. Ledford
Attorneys for Plaintiff

JONES, HEWSON & WOOLARD
By HUNTER A. JONES

/s/ HUNTER M. JONES
Hunter M. Jones

/s/ H. C. HEWSON
H. C. Hewson

/s/ D. D. SMITH By H. M. JONES
D. D. Smith
Attorneys for Defendants

Letter from Plaintiff to I.C.C. (Acting Secretary) dated February 26, 1965

(Correspondence, Ex Parte MC-65 [Sub No. 3])

INTERSTATE INVESTORS, INC.
733 Third Avenue
New York 17, N. Y.

Murray Hill 2-3277

Cable Address
"Intevestor" New York

February 26, 1965

Mrs. Bertha F. Armes
Acting Secretary
Interstate Commerce Commission
Washington 25, D.C.

Re: *Ex Parte MC-65 (Sub No. 3)—Proposed Rulemaking Under Provisions of Rule 1.44—Motor Carrier Operations*

Dear Mrs. Armes:

Reference your acknowledgement letter of February 25, 1964, it was agreed with counsel for the defendants in Civil Actions 1914 and 1935 USDC, W. D. N. C. that counsel for Queen would not file the request to withdraw the petition in Ex Parte MC-65 (Sub No. 3) until satisfactory releases had been exchanged between the plaintiff and the defendant in said civil actions.

To date no cross release texts from the defendants and Transcontinental Bus System, Inc. have been submitted to our company for approval, let alone accepted.

Consequently it is requested that the request for withdrawal in subject proceedings and for withdrawal as an intervenor in Dkt MC-F-8744 et al. (if this has also been submitted by counsel for Queen City or Transcontinental) be held in abeyance until authorization for their processing in the Commission is authorized by subsequent letter from the undersigned to your office.

Your assistance in this matter is appreciate.

Very truly yours,

/s/ William R. Burt
William R. Burt
President

WRB:l
ccs: HJones, WMNicholson, JLedford

Letter from Hunter Jones to I.C.C. (Acting Secretary) dated March 4, 1965

(Correspondence, Ex Parte MC-65 [Sub No. 3])

JONES, HEWSON & WOOLARD
ATTORNEYS AT LAW
Rooms 823-827 Law Building
CHARLOTTE, N. C. 28202

HUNTER M. JONES
HARRY C. HEWSON
WILLIAM L. WOOLARD

TELEPHONE
333-8684
AREA CODE 704

March 4, 1965

Mrs. Bertha F. Armes
Acting Secretary
Interstate Commerce Commission
Washington 25, D. C.

Re: Ex Parte MC-65 (Sub No. 3) Proposed Rule-making under Provisions of Rule 1.44-Motor Carrier Operations

Dear Mrs. Armes:

I received copy of Mr. William R. Burt's letter of February 26, 1965 to you under the above caption. I was counsel for Queen City Coach Company and others, defendants in the two civil actions referred to by him, and Mr. W. M. Nicholson and James B. Ledford, attorneys of Charlotte, were attorneys for Interstate Investors, Inc., the plaintiff in said actions. The representation made to you in the

first paragraph of Mr. Burt's letter of February 26th, 1965 is not correct. There was no agreement not to file the Request to Withdraw the Petition in Ex Parte MC-56 (Sub No. 3), or the Withdrawal as Intervenor in Docket MC-F-8744 et al. until there was an exchange of releases as stated by Mr. Burt. On the contrary, these two Requests for Withdrawal signed by Mr. Burt, and on which he signed a Certificate of Service dated by him on February 18th, were delivered in my presence to Mr. John F. Ray with authority on behalf of Mr. Burt to mail the copies in compliance with his Certificates of Service and to file the originals with the Commission and this authority contained no conditions whatever. The releases which Mr. Burt and Interstate Investors, Inc. were to sign were signed at approximately the same time. The cross-releases which Mr. Burt refers to were to be furnished later. The text of the one to be signed by the defendants in the Civil Actions had already been agreed upon but one of the signers was in Florida. The release to be signed by Transcontinental had been prepared in Dallas, Texas, but had not been received in Charlotte, and Mr. Burt expressly agreed in the presence of his attorneys, Mr. Nicholson and Mr. Ledford, to accept that in whatever form it had been drawn. It arrived on the following day, February 19th, and was on that day delivered to Mr. Ledford, Attorney for Interstate Investors, Inc. The release signed by the defendants in the Civil Actions was delivered to Mr. Ledford on February 25th, containing the text previously agreed upon.

Yours very truly,

/s/ HUNTER M. JONES

HMJ:H
cc: Mr. Burt
Mr. Nicholson
Mr. Ledford

Letter from Plaintiff-Appellant to I.C.C. (Acting Secretary) dated March 10, 1965

(Correspondence, Ex Parte MC-65 [Sub No. 3])

INTERSTATE INVESTORS, INC.
733 THIRD AVENUE
NEW YORK 17, N. Y. MURRAY HILL 2-3277

CABLE ADDRESS
"INTEVESTOR"
NEW YORK

Mrs. Bertha F. Armes
Acting Secretary
Interstate Commerce Commission
Washington 25, D. C.

March 10, 1965

Re: Ex Parte MC-65 (Sub No. 3) Proposed Rule-making under Provisions of Rule 1.44-Motor Carrier Operations

Dear Mrs. Armes:

We have received a copy of the Jones, Hewson & Woolard letter to you of March 4, 1965. The writer has no standing in subject proceedings inasmuch as the firm is counsel for the defendants (Queen City Coach Co. et al.) in Civil Actions 1914 and 1935 in the USDC, W. Dist. of N. Car. The letter does serve to confirm the statement in our letter to you of Feb. 26, 1965 that the requests for withdrawal were signed by Interstate but filed by counsel for Queen City pursuant to an agreement whose terms are now in dispute.

We repeat our earlier request that action by the Commission on the withdrawal be held in abeyance.

Thank you for your attention to this matter.

Very truly yours,

William R. Burt
President

WRB/mc

Letter from W. M. Nicholson and James B. Ledford to Hunter Jones dated March 11, 1965

(Appendix L to Intervenor-Defendant-Appellee's Reply to Plaintiff-Appellant's Petition in Ex Parte MC-65 [Sub No. 3])

JAMES B. LEDFORD
ATTORNEY AT LAW
LAW BUILDING
CHARLOTTE, N. C. 20202
TELEPHONE 333-7705

March 11, 1965

Mr. Hunter M. Jones
Jones, Hewson & Woolard
Attorneys at Law
823-827 Law Building
Charlotte, North Carolina

RE: Interstate Investors, Inc.
Queen City Coach Company
Love, et al. Matters

Dear Mr. Jones:

Receipt is acknowledged of your letters of recent date together with copies of correspondence between you and Mr. William R. Burt, President of Interstate Investors, Inc., 733 Third Avenue, New York, New York, all of which relate to the settlement of cases #1914 and 1935, in the United States District Court for the Western District of North Carolina at Charlotte, North Carolina.

I have just talked to Mr. Burt over the telephone this morning from Mr Ledford's office and it appears that his contention is that Transcontinental was given a release which was not in accord with his understanding and that he desires unless this matter can be remedied, that the settlement be voided and the above cases returned to status quo.

We have carefully examined the contentions of Mr. Burt and are at loss to understand why he now raises the question as above set out when in accordance with our definite understanding and agreement all of the conditions of the settlement were agreed upon by all of the parties thereto. We definitely recall the conference in the hallway in the United States District Courthouse in Charlotte when we stated to you that the Plaintiff, through its President, had agreed to settle these cases on the terms set forth in the releases which you had prepared. All releases, including the releases from the Defendants, were read by Mr. Burt; who at first refused to sign the releases to be executed by him, and at our subsequent meeting in the hallway as aforesaid, he agreed to settle these cases and sign the releases which you had prepared. The execution of the releases were made in the District Attorney's office prior to the convening of Court at which time a full and complete understanding was had between the parties. We later appeared before the Court and upon inquiry from the Judge, Mr. Burt arose and stated to the Court, in substance, that he was pleased with the settlement. We then left the Courtroom and came to Mr. Ledford's office in the Law Building where Mr. Burt put the Seal of the Corporation (Interstate Investors, Inc.) upon each of the releases which were delivered to us for the purpose of turning them over to you. At this time Mr. Burt, upon the full execution of these papers, received from

Mr. Ledford the sum agreed upon in the settlement less attorney fees and costs incurred during the discovery proceeding and the check received by Mr. Burt was deposited and has been paid. We had no intimation at that time that there was any disagreement as to the contents of the several releases and we were under the direct impression then and now that these cases were settled on the terms agreed upon between the parties.

We both distinctly remember that you told Mr. Burt that the releases from Transcontinental was being prepared by Mr. Goff and should be in your hands for delivery within the next day or so and that Mr. Burt replied, in substance, that he was making no point of the release from Transcontinental and that same could be copied from a form book or the use of a Blumberg Form, if necessary.

Concerning the filing of papers prepared to be filed with the Interstate Commerce Commission, which had been executed by Mr. Burt, there was some suggestion that those papers be returned to offices in the Law Building and mailed simultaneously with the sealing of the releases by Mr. Burt and the delivery of settlement checks by you. Inasmuch as a number of copies had to be made of such documents, it is our distinct recollection that these copies were to be made by Mr. John F. Ray, it was then suggested and agreed by all parties and their counsel, that these documents be held by Mr. John F. Ray for the purpose of making copies to be sent to the Interstate Commerce Commission and that Mr. Ray have the responsibility and authority of forwarding the same to the Interstate Commerce Commission. This question was brought up over the fact that Mr. Burt signed a statement that such documents had been mailed and served and John Ray assumed the responsibility of com-

pleting such service for him. We have no recollection, and do not believe there was any suggestion, that any of said documents were to be held by any person for any period of time, or that their filing with the Interstate Commerce Commission was to be contingent upon the happening of any event.

In view of the above, we are of the definite opinion and conclusion that these cases were settled in every respect in the manner agreed upon and that the resolution of the Board of Directors of Interstate Investors, Inc., which was exhibited by Mr. Burt, gave unto him the necessary authority to execute the aforesaid papers for and on behalf of the Corporation in the manner provided.

Very truly yours,

/s/ W. M. NICHOLSON
W. M. Nicholson

/s/ JAMES B. LEDFORD
James B. Ledford

WMN/JBL: en

cc: Mr. William R. Burt
733 Third Avenue
New York, New York

Letter from Warren A. Goff to I.C.C. dated June 25, 1965 and Enclosed Tax Ruling

(Late Filed Exhibit 168)

CONTINENTAL TRAILWAYS
315 CONTINENTAL AVENUE
DALLAS, TEXAS 75207
RI 6-3211 AREA CODE 214

June 25, 1965

WARREN A. GOFF
General Counsel
(Illegible) STAFFORD
Commerce Counsel

CARL B. CALLAWAY
Vice President and
Chairman at Law
ALFRED CRAGER
Corporate Counsel

RECEIVED
JUN 28 1965
INTERSTATE INVESTORS, INC.

Mrs. Bertha F. Armes
Acting Secretary
Interstate Commerce Commission
Washington, D. C.

Re: Docket No. MC-F-8744
Transcontinental Bus System, Inc.
Control—Virginia Stage Lines, et al.
Docket No. MC-F-8774
Transcontinental Bus System, Inc.—
Control—Queen City Coach Company, et al.

Dear Mrs. Armes:

At Pages 1281 and 1282 of the Record in the above captioned matter, the hearing examiner in those cases granted permission to the applicant to file certain late filed exhibits. All of the late filed exhibits which were enumerated therein have been filed with the exception of a tax ruling with reference to Queen City Coach Company and General Realty Company which had not been previously filed because applicants were awaiting its receipt from the Internal Revenue Service.

The tax ruling in question has now been received and I am attaching herewith the original and one copy of a tax ruling f m the United States Treasury Department in connection with Queen City Coach Company and General Realty and Insurance Corporation. The filing of this exhibit should complete the submission of all late filed exhibits by applicant.

Copies of this document have been mailed to all parties of record by and through their attorneys.

Sincerely,

Original Signed
BY WARREN A. GOFF
Warren A. Goff
General Counsel

WAG:bc
cc/enc: See attached

Carbon copies with attachment to:

Mr. Theodore Hardeen
Virginia Stage Lines, Inc.
Box 951
Charlottesville, Virginia

Mr. Douglas Drysdale
Battle, Neal, Harris, Minor & Williams
Court Square Building
Charlottesville, Virginia

Mr. John F. Ray
Attorney at Law
417 West 5th Street
Charlotte 1, North Carolina

Mr. James E. Wilson
Wilson, Woods & Villalon
Suite 716
Perpetual Building
1111 "E" Street, N.W.
Washington, D. C.

Mr. G. Kibby Munson
1012—14th Street, N.W.
Washington, D. C.

Mr. Maxwell A. Howell
Corcoran, Foley, Youngman & Rowe
1511 K Street, N.W.
Washington, D. C.

Mr. Robert J. Bernard
The Greyhound Corporation
140 South Dearborn Street
Chicago, Illinois

Mr. Martin S. Thaler
1701 Pennsylvania Avenue
Washington, D. C.

Mr. Earle W. Putnam
5025 Wisconsin Avenue, N.W.
Washington, D. C.

Mr. William R. Burt, President
Interstate Investors
733 Third Avenue
New York 17, New York

COPY

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

In Reply Refer to
T:R:R
FJF

June 15, 1965

Queen City Coach Co.
417 West Fifth Street
Charlotte, North Carolina

Gentlemen:

This is in reply to letters requesting a ruling with respect to the Federal income tax consequences of a proposed transaction. Information was received in letters dated September 4 and November 2, 1964, from Mr. Hunter M. Jones and February 4 and 18, 1965, from Mr. Douglas D. Drysdale. The relevant information submitted for consideration is as follows.

Transcontinental Bus System, Inc. (hereinafter called "Transcontinental") (Account number 75-0748603), a Delaware corporation, is a common carrier,—passengers, baggage and express by bus,—both in interstate and intrastate commerce. Its stock is owned by approximately 4,000 shareholders, and is sold over-the-counter in the major cities of the United States.

Queen City Coach Co. (hereinafter called "Queen") (account number 56-0369400), a North Carolina corporation, is a common carrier,—passengers, baggage and express by

bus,—both in interstate and intrastate commerce. It has 22,264 shares of no par value common stock outstanding.

General Realty and Insurance Corporation (hereinafter called "Realty") (account number 56-0466720), a North Carolina corporation, is engaged in the insurance and real estate business. It has 7,992 shares of $25 par value common stock outstanding.

It is stated that the controlling interests of Queen and Realty are owned by the same persons. Their top management is essentially the same and except for one person their Boards of Directors are identical.

In order to effectuate substantial cost savings it was proposed that Transcontinental and Queen be amalgamated. Because of the close relationship between Queen and Realty, Transcontinental considered it essential to acquire the stock of Realty in the event it acquired Queen.

All of the shares of Queen and Realty will be deposited with a bank in exchange for transferable "depositary receipts" by the shareholders of Queen and Realty. On consummation of the proposed transaction, Transcontinental will deliver its shares to the depositary in exchange for the Queen and Realty shares, and the depositary will then distribute the Transcontinental shares to the then holders of the depositary receipts.

Transcontinental will exchange 7.25 shares of its common stock for each share of Queen common stock and 7.25 shares of its common stock for each share of Realty common stock. A shareholder entitled to receive a fractional share of Transcontinental stock will receive scrip, which, when combined with other scrip, entitling the holder to a full share of stock, may be exchanged for stock in Trans-

continental. The depositary will act as the agent for the holders of scrip to sell such scrip for cash on account of the holder.

Each shareholder will pay the depositary for his share of any transfer fees and attorney's fees and Transcontinental will pay the other expenses of the depositary.

Transcontinental does not own stock (or depositary receipts representing stock) of Queen or Realty. However, Highway Insurance Company, of Zurich, Switzerland, a wholly-owned subsidiary of Western Sales, Limited, a Bahamian corporation, 49 percent of the stock of which is owned by Transcontinental, has purchased depositary receipts representing 1,387 shares of Queen and 829 shares of Realty.

It is stated that the holders of not less than 50 percent of the stock of Queen and the holders of not less than 50 percent of the stock of Realty have no present intention of disposing of the stock of Transcontinental which they will receive upon consummation of the proposed exchanges.

It is stated that there is no commitment, formal or informal, by Transcontinental or any one acting on its behalf to purchase Transcontinental stock from any of the shareholders of Queen or Realty after consummation of the proposed exchange, or to purchase depositary receipts before that time.

During the 12-month period preceding the filing of the applieation for a ruling 495 shares of Queen and 66 shares of Realty changed hands. Most of the Transfers were by way of gift, and all were within family groups.

It is assumed that Transcontinental has no present intention to liquidate Queen or Realty.

Based solely upon the information submitted and the assumption stated above, it is held as follows:

(1) The acquisition by Transcontinental, solely in exchange for shares of its voting stock, of shares of Queen and Realty, pursuant to the plan, will constitute a reorganization, in each instance, within the meaning of section 368(a)(1)(B) of the Internal Revenue Code. Transcontinental, Queen and Realty will be considered parties to the reorganization within the meaning of section 368(b) of the Code.

(2) No gain or loss will be recognized to the shareholders of Queen and Realty upon the exchange by them of their stock in Queen and Realty for stock of Transcontinental (including script certificates received in lieu of fractional shares) as provided in section 354 (a)(1).

(3) The basis of the Transcontinental stock received by the holders of Queen and Realty stock (including script certificates received in lieu of fractional shares) will be the same as the basis of the Queen and Realty stock surrendered in exchange therefor, pursuant to section 358(a).

(4) Gain or loss will be recognized to the shareholders of Queen and Realty who sell their script certificates, measured by the difference between the basis of the stock of Queen and Realty properly allocable to the script certificates sold and the proceeds of the sale Provided such script certificates represent capital assets in the hands of the shareholder, gain or loss will constitute capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code.

No opinion is expressed as to the tax treatment of the transaction under the provisions of any of the other sections of the Code and Regulations which may also be applicable thereto or to the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction which are not specifically covered by the above rulings.

It is important that a copy of this letter be attached to the Federal income tax returns of the interested parties for the taxable year in which the transactions are consummated.

Pursuant to your power of attorney on file in this office, a copy of this letter has been sent to Mr. Hunter M. Jones and to Mr. Douglas D. Drysdale.

Very truly yours,

/s/ JOHN W. S. TITTLETON
Director, Tax Rulings Division

Affidavit of Douglas D. Drysdale Sworn to on May 24, 1967

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERSTATE INVESTORS, INC.,

Plaintiff,

—against—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

—and—

TRANSCONTINENTAL BUS SYSTEM, INC.,

Intervenor-Defendant.

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA, *ss.*:

DOUGLAS D. DRYSDALE, being duly sworn, deposes and says:

1. I am an attorney-at-law and a member of the bars of the State of Virginia and the District of Columbia. My firm is Caplin & Drysdale, 1101 17th Street, N.W., Washington, D. C. The senior member of this firm is Mortimer M. Caplin, with whom I was in partnership in Charlottesville, Virginia, prior to his appointment as Commissioner of Internal Revenue. Since my graduation from

law school in 1953, I have been continuously engaged in the practice of law and have devoted the majority of my time to the federal tax area. My firm specializes in federal tax matters and handles a substantial volume of applications for Internal Revenue Service rulings, particularly in the reorganization area. I am a lecturer at the University of Virginia Law School, presenting a seminar for advanced students in the federal tax field. I have lectured on federal tax matters before a number of professional institutes, such as the Tax Institutes of Tulane University and the University of Miami. I have also contributed to the Journal of Taxation and am the editor of Michie's Federal Tax Handbook, published annually by The Michie Company of Charlottesville, Virginia.

2. In the latter part of 1963 and early part of 1964, as attorney for the stockholders of Virginia Stage Lines, Inc. (hereinafter "Virginia"), I participated in negotiations with Transcontinental Bus System, Inc. (hereinafter "Transcon"), which resulted in a contract executed on March 26, 1964, pursuant to which Transcon was to acquire substantially all of the stock of Virginia solely in exchange for Transcon voting stock, subject to approval of the I.C.C. and the issuance of a satisfactory tax ruling. In connection with these negotiations I learned that Transcon had investments in various European operations. I learned also that Transcon planned to divest itself of some part of its foreign holdings, and the agreed upon exchange ratio of Virginia stock for Transcon stock was arrived at on the basis that Transcon would own only 40% of the foreign subsidiaries at the time of consummation. The contract between Transcon and the Virginia shareholders contained a warranty that Transcon's assets, at the time

of consummation, would include 40% of the foreign subsidiaries. In accordance with the understanding of the parties, Transcon's ownership of its foreign subsidiaries was 40% on September 16, 1966, the date on which the Virginia acquisition was consummated. Incident to my representation of the Virginia shareholders in this transaction, I applied for and obtained the necessary ruling from the Internal Revenue Service.

3. In May, 1964, Transcon entered into another contract for the acquisition of the stock of Queen City Coach Company (hereinafter "Queen") and General Realty & Insurance Corporation. The terms of this contract were substantially similar to those of the Virginia contract including specifically a condition that a satisfactory I.R.S. ruling be obtained and a warranty that at consummation Transcon would own 40% of its foreign subsidiaries. At the request of one of the officers of Virginia, I sent a copy of the request for tax ruling filed in the Virginia case to Mr. Hunter M. Jones of Charlotte, North Carolina, counsel for the Queen group, who I was told was not a specialist in tax matters.

4. In early August, 1964, I received a Transcon news release stating that Transcon was distributing as a dividend to its stockholders shares representing 51% ownership of Western Sales, Ltd. (hereinafter "Western"), the holding company for Transcon's foreign operations. More specifically, the release indicated that Transcon would (a) by purchase increase its ownership to 100% of Western, (b) recapitalize Western so that there would be two classes of stock outstanding, Class A and Class B, and (c) distribute Class A shares constituting 51% ownership of Western. The release stated that the plan had been adopted

by the Board of Directors of Transcon on July 31, 1964, and that distribution would be made on or about September 18, 1964, to Transcon stockholders of record on August 28, 1964. I considered this action on the part of Transcon as consistent with its agreement with the Virginia shareholders and anticipated that, at a subsequent date, additional Western stock would be distributed to reduce Transcon's ownership in that company to only 40%. Transcon made such a distribution, representing a 9% interest in Western, on June 3, 1966, to stockholders of record on April 1, 1966.

5. At the end of November, 1964, I was asked if I would assist Mr. Hunter M. Jones in obtaining the Internal Revenue Service ruling required in connection with the Queen acquisition, and agreed to do so. On Mr. Jones' getting in touch with me, I found that he had already filed an application for ruling with the Internal Revenue Service and had received a request for certain additional information from Mr. Frederic J. Freed, the technician handling the case in the Reorganization and Dividend Branch of the Tax Rulings Division of the national office, Internal Revenue Service. Shortly after my original contact with Mr. Jones I left the country for a vacation and was unable to work on the matter until I returned. About the middle of January, 1965, I went to see Mr. Freed in order to obtain some clarification of the questions he had raised with Mr. Jones, and under date of February 4, 1965, I furnished him with the information he had requested, together with some analysis of the applicable law.

6. One of the questions Mr. Freed asked was whether Transcon had acquired any of the depositary receipts issued

in connection with the Queen contract. My letter of February 4, 1965, stated that certain of the receipts had been purchased by Highway Insurance Company (hereinafter "Highway"), a Swiss corporation owned by Western, a 49% subsidiary of Transcon. Attached to the letter was a schedule showing the purchase dates, the numbers of shares, and the sellers. I did not advise Mr. Freed of Transcon's acquisition and distribution of Western stock during August and September, 1964, because I did not consider these facts material in the circumstances, as explained below.

7. The Queen application to the Internal Revenue Service asked for a ruling that the proposed exchange of Queen stock for Transcon stock would be a tax-free reorganization as defined in section 368(a)(1)(B) of the Internal Revenue Code. Under this provision, a tax-free reorganization occurs where one corporation acquires at least 80% of the stock of another corporation solely in exchange for voting stock of the acquiring corporation. Thus, if the acquiring corporation, in related transactions, acquires some shares of the stock of the other corporation for cash and other shares for stock, the requirements of a "B" reorganization are not met, because the acquiring corporation has given some consideration other than voting stock. On the other hand, if the acquiring corporation purchases for cash some stock in the corporation to be acquired, but disposes of that stock and later acquires 80% control of the acquired corporation solely for voting stock, there would, in my opinion, be a good "B" reorganization. In such a case all of the stock acquired by the acquiring corporation would be acquired solely in ex-

change for its own voting stock, and the prior cash purchase would not be relevant to the determination.

8. In the case of the Transcon acquisition of Queen, the question for ruling was whether at consummation Transcon would acquire all of the Queen shares for voting stock or whether the depositary receipts previously purchased by Highway for cash would be treated as if they had been purchased by Transcon. Since, as indicated above, the question whether Transcon gave consideration other than voting stock would have to be determined at the date of consummation, Transcon's record ownership of 100% of the shares of Western for a brief period in 1964 was not relevant in determining whether the purchases by Highway would be treated, at consummation, as the purchases of Transcon. Rather, the relevant question was whether the 49% ownership (which was expected to be reduced to 40% at the time of consummation) would be satisfactory to the Internal Revenue Service. In addition, I did not consider that Transcon would be viewed, for purposes of the reorganization provisions, as ever having owned 100% of Western. Prior to its acquisition of the Western stock it bought in August, 1964, it had declared a dividend payable in Western stock. The beneficial ownership of such stock was thus in Transcon's shareholders when Transcon acquired it and Transcon functioned as a mere conduit by which certain stock was transferred to its shareholders.

9. When I first learned of the purchases of the depositary receipts by Highway, I recognized that there was a possibility that the Revenue Service would consider these to be purchases by Transcon; although, in my view, they were not. While there are many Internal Revenue Code provisions under which stock owned by one party is treated

as being owned by another related party, none of them was applicable to the case under consideration. It was also my view that if the Revenue Service did raise a question about the Highway purchases, the problem could be solved simply by having Highway dispose of the depositary receipts before the closing. I reasoned that if this were done, all of the Queen stock would be acquired by Transcon solely for Transcon voting stock, and any possible Service objection on this score would be removed. I so advised Mr. Warren Goff, general counsel for Transcon, in discussing the matter with him on the telephone. It did not prove necessary, however, for Highway to dispose of the depositary receipts since the Revenue Service did not consider the purchase of depositary receipts by Highway to be attributable to Transcon and issued a favorable ruling on the transaction.

10. The views expressed in paragraphs 7, 8 and 9 above are concurred in by two of my partners, each of whom held an important position in the office of the Tax Legislative Counsel, Treasury Department, which plays an important role in the drafting of tax legislation and Treasury Regulations.

11. At the time of my conferences and communications with Mr. Freed, I was unaware of precisely how the sales of the depositary receipts to Highway had been accomplished. While I assumed that Transcon had arranged for the purchases, I did not regard the manner in which they had been accomplished as having any bearing on the ruling applied for.

12. The opinions expressed above deal with a problem that is not encountered in all types of tax-free reorgani-

zations. For example, Transcon might have purchased 20% or more of Queen's stock (but less than 50%) for cash, and then amalgamated with Queen in a statutory merger. This would have been a tax-free reorganization as to those Queen shareholders who participated in the merger and received Transcon stock for their Queen stock.

13. I have read a copy of a letter from Mr. Frederic J. Freed to Mr. William R. Burt, dated May 10, 1967. In this letter Mr. Freed states: "If only one share of Transcon stock or only one depositary receipt was acquired while Western was a wholly owned subsidiary, it is my opinion that this would destroy the 'B' Reorganization." I have also read the letter of Mr. Burt dated April 5, 1967, to which Mr. Freed's letter was a reply. I note that Mr. Burt did not inform Mr. Freed of the transitory nature of Transcon's ownership of the Western stock which it distributed to its shareholders or of the fact that the equitable and beneficial ownership of that stock was in the Transcon shareholders at the time it was acquired by Transcon. In any event I do not agree with Mr. Freed's opinion on this point. He is not now, of course, speaking for the Internal Revenue Service; nor did he himself, when he was an employee of the Internal Revenue Service, speak for the Service. He was a technician in the Reorganization and Dividend Branch of the Tax Rulings Division of the Service. As such, he was not a Service official with authority to determine whether the ruling requested should be issued or denied. His function was to analyze the facts of requests for rulings which were assigned to him, obtain such additional information as he or his supervisor deemed necessary, prepare a draft ruling letter, and forward the file to his supervisor for review. Following review by his

supervisor, and the making of any changes required by the supervisor (which might involve reversal of the technician's holding) the file would, in normal course, be sent to the Branch Chief or Assistant Branch Chief for final review and signature. In some cases applications for ruling are submitted to further processing, and I believe that in the case of the Queen City ruling there was further review at the Division level, as indicated by the fact that the ruling was signed by Mr. John W. S. Littleton, Director of the Tax Rulings Division.

/s/ Douglas D. Drysdale

[Sworn to on May 24, 1967]

Article Appearing in Wall Street Journal

3 August 1964, p. 13

TRANSCONTINENTAL BUS SLATES DIVIDEND IN SHARES OF WESTERN SALES, LTD.

By a WALL STREET JOURNAL *Staff Reporter*

DALLAS — Transcontinental Bus System, Inc., declared a stock dividend payable in Class A shares of Western Sales, Ltd., a Bahamian corporation.

Transcontinental said the dividend will be distributed about Sept. 18 to stockholders of record Aug. 28 on the basis of one 11-shillings unit of the Western Sales Class A shares for each two shares of Transcontinental stock held. The dividend will be distributed in the form of American depositary receipts representing Western Sales Class A stock. Cash will be paid in lieu of fractions on the basis of a market value per unit of stock of $2.50, Transcontinental said, noting that while the units of stock represent 11 Bahamian shillings this is the equivalent of the par value and isn't related to the market value.

The 993,286 units of stock to be distributed represent 51% of the combined total Class A and Class B units of stock to be outstanding upon a reclassification and conversion of shares of Western Sales currently in process, Transcontinental said. Prior to the distribution of the Class A stock, Transcontinental said it will have acquired 100% of the capital stock of Western Sales.

The dividend payment will leave Transcontinental with 174,914 units of Western Sales Class A stock and all the 778,800 units of Class B stock. After the distribution of the dividend, a stockholders' meeting of Western Sales will be called to accept the resignation of existing directors and to elect their successors, Transcontinental said.

Letter, Interstate's Secretary to Hunter Jones, 4/9/65

April 9, 1965

Mr. Hunter M. Jones
Jones, Hewson & Woolard
Attorneys at Law
823-827 Law Building
Charlotte, North Carolina

Re: Civil Actions 1914 and 1935—USDC, WDNC

Dear Mr. Jones:

Per the reasons set forth in Mr. Burt's letter to you of March 1, 1964, there are returned to you again the originals of:

a) "General Release" dated 18 February 1965 executed by the defendants in Civil Actions 1914 and 1925, and

b) "Release" dated 17 February 1965 executed by Transcontinental Bus System, Inc.

They arrived in this office for the second time as enclosures to the copy of the Nicholson-Ledford letter to you of March 11, 1965 sent to Mr. Burt.

In view of the position adverse to the interests of this company taken by Messrs. Nicholson and Ledford in their letter to you dated March 11, 1965, it is assumed they either have or intend to withdraw as counsel for this company in matters relating to dispute as to the settlement of Civil Actions 1914 and 1935.

The directors of Interstate have declined to ratify the inclusion of a release to Transcontinental Bus System, Inc. and its officers and directors covering their liability to this company arising out of violations of the antitrust laws as

part of the settlement of subject actions. Our position is that the authority to settle subject actions granted to the President of this company by resolutions of its Board on January 29, 1965, did not extend to such release of liability for Transcontinental which was not a party to subject actions.

We are advised that Mr. Burt delivered to you pursuant to your demand, a certified copy of the resolutions of January 29, 1965, referred to above, which served to notify you of the limits of the authority granted.

We are now advised that the terms of the releases in favor of the defendants in subject actions and Transcontinental Bus System, Inc., drafted by you and submitted for signature of the President of this company in the District Attorney's office in the Federal Court House, in Charlotte, N. C., at approximately 4:30 p.m. on February 18, 1965, contain terms making such releases void as against public policy and that the documents and the actions they include which you required be signed constitute violations of the laws of the United States of America, particularly the antitrust laws.

You are hereby notified that the releases executed by the President of this company on February 18, 1965 in favor of the defendants in Civil Actions 1914 and 1935, and Transcontinental Bus System, Inc., under the circumstances and for the reasons described above, are void.

Very truly yours,

Miriam Cahners
Secretary

ccs: Transcontinental Bus System, Inc.
Queen City Coach Company